No. 384

# In the Supreme Court of the United States

OCTOBER TERM, 1961

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

SALLY L. BILDER, ETC.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE PETITIONER

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## CITATIONS





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### OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 3–9) are reported at 33 T.C. 155. The opinion of the court of appeals (R. 11–39) is reported at 289 F. 2d 291.

### JURISDICTION

The judgment of the court of appeals was entered on April 7, 1961 (R. 40). On June 20, 1961, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to and including September 4, 1961 (R. 42), and the petition was filed on September 1, 1961. The petition for a writ of certiorari was granted on November 13, 1961 (R. 43). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the rent paid by the taxpayer for an apartment in Florida while residing there during the winter months on the advice of his physician is deductible as a medical expense under Section 213 of the Internal Revenue Code of 1954 or is a nondeductible personal living expense under Section 262.

## STATUTE AND REGULATIONS INVOLVED

Internal Revenue Code of 1954:

> SEC. 213. MEDICAL, DENTAL, ETC., EXPENSES.
>
> (a) *Allowance of Deduction.*—There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152)—
>
> * * * * *
>
> (e) *Definitions.*—For purposes of this section—
>
> (1) The term "medical care" means amounts paid—
>
> (A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance), or
>
> (B) for transportation primarily for and essential to medical care referred to in subparagraph (A).
>
> (2) * * *

(26 U.S.C. 213)

SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(26 U.S.C. 262)

Treasury Regulations on Income Tax (1954 Code):

SEC. 1.213–1. *Medical, Dental, Etc., Expenses.*—

* * * * *

(e) *Definitions*—(1) *General.*

* * * * *

(iv) Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for "transportation primarily for and essential to medical care" shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. On the other hand, if the travel is undertaken merely for the general improvement of a taxpayer's health, neither the cost of transportation nor the cost of meals and lodging would be deductible. If a doctor prescribes an operation or other medical care, and the taxpayer chooses for purely personal considerations to travel to another locality (such as a resort area) for the operation or the other medical care, neither the cost of transportation nor the cost of meals and lodging (except where paid as part of a hospital bill) is deductible.

## STATEMENT

In 1954 the taxpayer, Robert M. Bilder,[1] was engaged in the practice of law in Newark, New Jersey, and resided in a nearby town with his wife and his three-year old child. He was then 43 years of age. Earlier, the taxpayer had suffered four coronary occlusions, each resulting in a myocardial infarction which restricted the flow of blood in his heart. The heart attacks were suffered in the course of the disease of atherosclerosis which afflicted the taxpayer (R. 3–4, 12).

In December 1953, the taxpayer was advised by an eminent heart specialist that he should spend the winter months in a warm climate as part of the treatment of his disease and in order to prevent further heart attacks. Following that advice, the taxpayer and his family went to Fort Lauderdale, Florida, for the period from January 1, 1954, to March 24, 1954. The taxpayer rented an apartment in Fort Lauderdale for that period for $1,500, which was less than the cost of a single room in a hotel. The apartment was close to a hospital which had facilities to test the taxpayer's blood to determine the correct dosage of an anticoagulant drug known as Dicumerol. One of the few doctors in Florida competent to supervise

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[1] Robert M. Bilder is referred to as the sole taxpayer, his wife, Sally L. Bilder, being a party only because joint tax returns were filed. By reason of the taxpayer's death on June 9, 1961, the court of appeals on August 25, 1961, ordered the substitution of Sally L. Bilder in his place, in her representative capacity, as sole executrix of his last will and testament (R. 41).

the taxpayer's use of Dicumerol, then in limited use, practiced in Fort Lauderdale and the taxpayer was under his care (R. 4–5, 12–13). The following winter, from December 15, 1954, to February 10, 1955, the taxpayer and his family returned to Fort Lauderdale and lived in the same apartment, paying a total rental for that period of $829 (R. 5–6, 13). The taxpayer took these trips to Florida not as vacations but as a matter of medical necessity as part of the treatment of his disease (R. 5–6).

In his income tax returns filed for the taxable years 1954 and 1955, the taxpayer claimed as deductible medical expenses the cost of renting the Florida apartment and $250 each year for his transportation between Newark, New Jersey, and Fort Lauderdale, Florida (R. 6, 13). The Commissioner disallowed these deductions. The Tax Court reversed the Commissioner's determination in part and allowed a deduction for taxpayer's transportation expenses and for one-third of the rent paid for the Florida apartment. It disallowed two-thirds of the rent on the ground that "[f]rom the record we are unable to conclude that having his family in Florida with him was necessary as a part of the treatment of his disease" (R. 6, 9, 13).

The Commissioner accepted the allowance of the deduction for transportation but appealed from the allowance of any part of the rent. The taxpayer appealed from the disallowance of two-thirds of the rent. The court of appeals, with Judge Hastie dissenting, held that all of the rent paid for the apartment was deductible (R. 11–34, 34–39).

## SUMMARY OF ARGUMENT

The taxpayer seeks to deduct as medical expenses the cost of lodging for himself, his wife, and his child on two trips to Florida which were prescribed by a physician for purposes of his health. The lodging expenses are part of his ordinary cost of living which, under Section 262 of the Internal Revenue Code of 1954, cannot be claimed as a deduction for income tax purposes, except to the extent that such a deduction is "expressly provided" for in Section 213. That section limits deductible medical expenses to amounts spent for medical services, hospitalization, and the like, plus expenditures for transportation primarily for and essential to medical treatment. Section 213 does not, expressly or otherwise, allow the deduction of amounts spent for lodging. Such expenses are therefore not deductible.

The taxpayer argues that Section 213 of the 1954 Code merely reenacted Section 23(x) of the 1939 Code, which had been interpreted as including within deductible medical expenses amounts spent for lodging, meals, and transportation on trips prescribed for medical reasons. Although the taxpayer's characterization of prior law is correct, he is clearly wrong in his assumption that Congress intended to reenact the same rule in the 1954 Code. While Congress did use the same language to define "medical care" in Section 213 as in Section 23(x), it added, as part of the definition, an express provision allowing the deduction of amounts paid for "transportation" as medical care expenses. Giving effect to the statute

as a whole, the necessary conclusion is that Congress thereby intended to confine the definition of medical expenses so that lodging and other personal living expenses would not be deductible as costs of medical care.

The Commissioner's construction of Section 213 is confirmed by its legislative history. This history can properly be considered for two reasons: first, the language of the statute, at the very least, does not show on its face that lodging expenses are deductible; second, even if the language seemingly stated that lodging expenses were deductible, it would be appropriate to consider clear and persuasive legislative history. *E.g., Boston Sand and Gravel Co.* v. *United States,* 278 U.S. 41, 48; *Harrison* v. *Northern Trust Co.,* 317 U.S. 476, 479. The House and Senate Committee reports, anticipating this very case, expressly state:

> The deduction permitted for "transportation primarily for and essential to medical care" clarifies existing law in that it specifically excludes deduction of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments and to escape unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient's health, the cost of the patient's transportation to Florida would be deductible but not his living expenses while there.

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This expression of Congressional intent is also embodied in the Treasury regulation promulgated under Section 213. Thus, the net effect of the decisions of the Tax Court and the court of appeals is to make Section 213 of the 1954 Code mean exactly what the Committee reports and the Treasury Regulations explicitly say it does not mean. Those decisions should be reversed.

## ARGUMENT

### THE COST OF LODGING FOR THE TAXPAYER AND HIS FAMILY WHILE ON TRIPS PRESCRIBED BY THE TAXPAYER'S PHYSICIAN FOR PURPOSES OF HIS HEALTH IS NOT DEDUCTIBLE AS A MEDICAL EXPENSE UNDER THE 1954 INTERNAL REVENUE CODE

Following the advice of his physician that he should spend the winter months in a warm climate in order to reduce the danger of a heart attack, the taxpayer and his family left New Jersey and made their home in Fort Lauderdale, Florida, for several months during each of the years 1954 and 1955, where they resided in a rented apartment. The taxpayer deducted in his tax returns filed for those years the rental payments for the Florida apartment as amounts expended for medical care. The Court of Appeals for the Third Circuit agreed (Judge Hastie dissenting) that such personal living expenses are deductible as medical expenses under the 1954 Code when incurred on trips for medical reasons. Subsequently, the Court of Appeals for the Second Circuit held under similar circumstances that expenses of lodging (and meals) are personal expenses which are not

within the deduction for medical expenses. *Carasso* v. *Commissioner,* 292 F. 2d 367, pending on petition for a writ of certiorari, No. 675 Misc., this Term.

A. Section 213 of the Internal Revenue Code of 1954, *supra,* p. 2, allows deductions for expenses paid for "medical care." Subsection (e) defines "medical care" as "amounts paid (A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body * * *, or (B) for transportation primarily for and essential to medical care referred to in subparagraph (A)." Section 262, *supra,* p. 3, provides that "(e)xcept as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses." Clearly, the cost of the lodging for the taxpayer and his family in Florida was a "personal, living, or family" expense. Indeed, unlike transportation, the costs of lodging are the kind of personal expenses which all taxpayers, sick or well, have to incur. Therefore, the costs of lodging are not deductible unless they are expressly deductible under Section 213. While Section 213(e) expressly allows the deduction of amounts spent for a doctor's services, hospitalization, and similar direct medical costs under clause (A) and of transportation under clause (B), there is no provision for the deduction of lodging. As Judge Hastie stated in his dissent below, Section 262 "means that, when a taxpayer asserts that living expenses during absences from home necessary for medical care are deductible under the 1954 Code, he must carry the burden imposed by Section

262 of pointing out where such living expenses are 'expressly' included among the deductible items related to medical care. This cannot be done here because there simply is no such express provision" (R. 36).

Moreover, the express authorization of a deduction for transportation costs in clause (B) of Section 213 indicates that the definition of medical care in clause (A) would not otherwise include transportation costs. Since Congress did not include lodging in clause (B), the medical care deduction does not include lodging.

B. The history of the medical expense provisions in the 1954 Code demonstrates beyond the slightest doubt that the government construction of the words of the statute is correct.

From the inception of the income tax laws, personal living expenses, including lodging, food, transportation and medical care, were nondeductible.[2] By the Revenue Act of 1942 (Section 127(a), 56 Stat. 825), however, Congress excepted "extraordinary medical expenses deductible under section 23(x)" from otherwise nondeductible personal ex-

[2] *E.g.*, Income Tax Act of 1913, Sec. IIB, 38 Stat. 167. One exception, adopted in 1921 and since continued, was the express allowance of a deduction, as an ordinary and necessary business expense, for amounts expended for meals and lodging while "traveling * * * away from home in the pursuit of a trade or business." See Revenue Act of 1921, Sec. 214(a)(1), 42 Stat. 239; Internal Revenue Code of 1954, Sec. 162(a)(2); *Commissioner* v. *Flowers*, 326 U.S. 465.

penses[3] and added a new Section 23(x) authorizing the deduction of medical expenses within stated limits. The expenses for which deduction was allowed were defined in Section 23(x) as "amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease."

Section 23(x), it may be seen, did not in terms expressly authorize the deduction of transportation and living expenses on trips undertaken for medical reasons. The regulations, however, interpreted the statute to allow a deduction, as a part of the cost of "treatment," of amounts expended for "travel primarily for and essential to * * * the prevention or alleviation of a physical or mental defect or illness * * *." Regs. 111, Sec. 29.23(x)–1. The cost of "travel" was in turn held to include the cost of meals and lodging during the trip. I.T. 3786, 1946–1 Cum. Bull. 75–76. Following the lead of the regulations and the Commissioner's ruling, the Tax Court and the Court of Appeals for the Sixth Circuit held that a taxpayer who had sent his child to a school in Arizona in order to improve an asthmatic condition was entitled to deduct the costs of

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[3] Section 24 of the 1939 Code was amended to read:

SEC. 24. *Items not deductible—(a) General Rule.*

In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x); * * *.

food and lodging at the school as a medical expense. *Stringham* v. *Commissioner*, 12 T.C. 580 (1949), affirmed *per curiam*, 183 F. 2d 579; cf. *Havey* v. *Commissioner*, 12 T.C. 409. Thus, it was accepted, prior to the adoption of the 1954 Code, that Section 23(x) allowed the deduction as a medical expense of the costs of transportation, lodging, and meals on trips taken for medical purposes.[4]

The broad interpretation of Section 23(x) opened the door to abuse. It introduced unfair discrimination into the treatment of ordinary everyday costs of living by allowing taxpayers suffering from disease to deduct family and living costs of a kind incurred by all taxpayers and not solely or even primarily the consequence of the need for medical care. Hence, at the suggestion of the Treasury Department, the provisions for medical expense deductions were revised in the 1954 Code in order to limit the scope of the deduction, while at the same time increasing the allowable amount.[5] This was accomplished by con-

[4] After the adoption of the 1954 Code, this construction of Section 23(x) of the 1939 Code was continued. *Embry* v. *Gray*, 143 F. Supp. 603, 604–605 (W.D. Ky.), appeal dismissed, 244 F. 2d 718 (C.A. 6); *Winderman* v. *Commissioner*, 32 T.C. 1197; Rev. Rul. 55-261, 1955-1 Cum. Bull. 307.

[5] When the hearings of the Senate Finance Committee on the 1954 Code opened, the chairman submitted a summary of the principal provisions of the House bill prepared for the committee's use by the technical staff of the Joint Committee on Internal Revenue Taxation. 1 Senate Hearings on the Internal Revenue Code of 1954, 83d Cong., 2d Sess., p. 1. This summary stated with reference to the medical expense deduction in the House bill (*id.* at p. 24):

> A new definition of "medical expenses" is provided which incorporates regulations under present law and also pro-

tinuing to define the costs of medical care as "amounts paid * * * for the diagnosis, cure, miti-

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vides for the deduction of transportation expenses for travel prescribed for health, but not the ordinary living expenses incurred during such a trip.

When Marion B. Folsom, Undersecretary of the Treasury, testified before the committee he submitted "a document giving a brief summary of 27 of the principal provisions of this bill. This document was prepared for your help in studying the various provisions" (*id.* at pp. 99–100). Item 9 in this memorandum explained the changes made in the House bill from the old law with respect to the medical expense deduction (*id.* at p. 103):

9. MEDICAL EXPENSE DEDUCTION

| *Present* | *Proposed* |
|---|---|
| (a) Deduction for expenses in excess of 5 percent of income. | (a) Reduce percentage requirement to 3 percent. |
| (b) Ceiling of $1,250 per person and $5,000 per family. | (b) Double ceiling to $2,500 per person and $10,000 per family. |
| (c) Fairly broad definition of medical expenses. | (c) Tighten definition to exclude ordinary household supplies. Permit deduction of cost of transportation necessary for health *but not ordinary living expenses incurred during trip.* |
| | Overall effect of proposed changes is to liberalize and extend relief in real hardship situations due to heavy medical expense *but curb deduction of ordinary or luxury living expenses in guise of medical costs.* |

Number of taxpayers benefited: 8,500,000.
[Emphasis added.]

gation, treatment, or prevention of disease" (Section 213(e)(1)(A)), and adding a specific allowance for amounts paid for transportation primarily for and essential to such medical care (Section 213(e)(1)(B). At the same time, the language of Section 24 of the 1939 Code was changed in Section 262 of the 1954 Code by omitting the explicit exception of "extraordinary medical expenses" under Section 23(x) from the disallowance of "personal, living, or family expenses." Section 262 now provides that "[e]xcept as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."

The Committees of both Houses explained the changes made with respect to the medical deduction as follows (H. Rep. No. 1337, 83d Cong., 2d Sess., p. A60 (3 U.S.C. Cong. & Adm. News (1954) 4017, 4197); S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 219–220 (3 U.S.C. Cong. & Adm. News (1954) 4621, 4856)):

> Subsection (e) defines medical care to mean amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of diseases or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance), or for transportation primarily for and essential to medical care. The deduction permitted for "transportation primarily for and essential to medical care" clarifies existing law in that it specifically excludes deduction of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments and to escape

> unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient's health, the cost of the patient's transportation to Florida would be deductible but not his living expenses while there. However, if a doctor prescribed an appendectomy and the taxpayer chose to go to Florida for the operation not even his transportation costs would be deductible. The subsection is not intended otherwise to change the existing definitions of medical care, to deny the cost of ordinary ambulance transportation nor to deny the cost of food or lodging provided as part of a hospital bill.

The Senate Report also stated (S. Rep. No. 1622, p. 35 (3 U.S.C. Cong. & Adm. News, *supra*, p. 4666)):

> A new definition of "medical expenses" is provided which allows the deduction *of only transportation expenses for travel prescribed for health, and not the ordinary living expenses incurred during such a trip.* [Emphasis added.]

To the same effect is H. Rep. No. 1337, p. 30 (3 U.S.C. Cong. & Adm. News, *supra*, p. 4055). This express Congressional intent is embodied in Treasury Regulations on Income Tax (1954 Code), Section 1.213–1 (e)(1)(iv), *supra*, p. 3, which provide in pertinent part:

> Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for

"transportation primarily for and essential to medical care" shall not include the cost of any meals and lodging while away from home receiving medical treatment.

It thus clearly appears that after the 1942 amendments to the 1939 Code taxpayers could deduct, as medical expenses, the cost of food, lodging, and transportation incurred in connection with medical care, but that Congress in the 1954 Code permitted a deduction only for transportation. Congress excluded by intentional omission any deduction for food and lodging.

C. The decision below necessarily rests upon a three-fold argument: (1) that Section 213(e)(1)(A) defines medical care in the same terms as does Section 23(x) of the Internal Revenue Code of 1939; (2) that Section 23(x) of the Internal Revenue Code of 1939 was interpreted to include transportation, meals, and lodging primarily for and essential to medical care; and (3) that, by reenacting the language of Section 23(x) into Section 213(e)(1)(A), Congress approved this interpretation of the prior law and thus it is now a part of the 1954 Code.

As we have indicated above, this contention is erroneous for several reasons. First, Section 262 of the 1954 Code requires express authorization for the deduction of personal, living, and family expenses and there is no express provision for lodging unlike for transportation. Second, under the court of appeals' logic, clause (B) of Section 213(e)(1) of the 1954 Code, which allows the deduction of transpor-

tation primarily for medical care, becomes unnecessary—a construction which is contrary to the elementary principle that any material change of language between a predecessor and successor statute must be presumed to be purposeful. *Brewster* v. *Gage*, 280 U.S. 327, 337. And third, even apart from any reference to the prior statutory text, it would seem that since transportation, food, and lodging are in the same class of expenses incurred in connection with medical care, the express authorization of one excludes any authorization of the other.

Finally, and most conclusively, the Committee reports explicitly state the intent of Congress. In this respect, the case is, in Judge Hastie's words, "extraordinary" (R. 34), since it is not often that the very facts of the hypothetical example used by the Committees to explain the meaning of a statute become the real facts of later litigation. Here both Committees stated:

> * * * if a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments and to escape unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient's health, the cost of the patient's transportation to Florida would be deductible but not his living expenses while there.

It requires, as the opinion below demonstrates, an elaborate construction, drawing upon far less direct aids to the determination of Congressional intent, to avoid the declaration of the Committtes that "The de-

duction permitted for 'transportation primarily for and essential to medical care' clarifies existing law in that it specifically excludes deduction of any meals and lodging while away from home receiving medical treatment."

The force of the legislative history could be avoided, if at all, only if the statute were so clear on its face as to make consideration of its history improper. But, as we have shown above (pp. 9–10), the words of the 1954 Code strongly support the view, if they do not show conclusively, that lodging is not deductible. At the least, the definition of medical care in Section 213—"amounts paid * * * for the diagnosis, cure, mitigation, treatment, or prevention of disease"—does not on its face include lodging and meals on a trip taken for health purposes. Indeed, the original conclusion of the Tax Court that Section 23(x) of the 1939 Code permitted the deduction of lodging expenses was itself based largely on legislative history, the court noting that, standing alone, the provision was "susceptible to a variety of conflicting interpretations." *Stringham v. Commissioner, supra*, 12 T.C. at 583.

This Court has, moreover, frequently relied upon legislative history even where it was arguable—as it is not here—that the statutory language was unambiguous. For example, in *Boston Sand and Gravel Co.* v. *United States*, 278 U.S. 41, 48, the Court, in an opinion by Mr. Justice Holmes, stated:

> It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law, and does not pre-

> clude consideration of persuasive evidence if it exists.

Again, in *Harrison* v. *Northern Trust Co.*, 317 U.S. 476, 479, the Court reversed a court of appeals decision which had refused to examine the legislative history on the ground that the statute was unambiguous, saying:

> [W]ords are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on 'superficial examination.'" *United States* v. *American Trucking Assns.*, 310 U.S. 534, 543–44.

Accord, *United States* v. *Dickerson*, 310 U.S. 554, 561–562; *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, 444 (opinion of Mr. Justice Frankfurter). Thus, the important part which the legislative history plays in determining the meaning of a statute is now a firmly entrenched teaching of this Court. See also *United States* v. *Rosenblum Truck Lines*, 315 U.S. 50, 55; *Commissioner* v. *Estate of Church*, 335 U.S. 632, 687; *Schwegmann Bros.* v. *Calvert Corp.*, 341 U.S. 384, 390–395, 399; *Colony, Inc.* v. *Commissioner*, 357 U.S. 28, 33; *United States* v. *Cannelton Sewer Pipe Co.*, 364 U.S. 76, 81–86; *Bulova Watch Co.* v. *United States*, 365 U.S. 753, 759–760; *Commissioner* v. *Lester*, 366 U.S. 299, 301–303. To disregard the Committee reports in this case would, we submit, not only reopen the specific issue of the extent of the medical deduction with reference to food, lodging, and transportation, which was settled by the 1954 Code, but also in-

vite unnecessary litigation with respect to many other provisions of the revenue laws, the terms of which are often clarified and explained by reference to the careful statements of the drafting and reporting committees.

In conclusion, whatever may have been the proper interpretation of Section 23(x) of the 1939 Code, the purpose of Congress in Section 213 of the 1954 Code is clear beyond doubt—to allow deduction of the cost of transportation necessary to medical care but to deny deduction of the cost of lodging and meals incurred during the trip. The decision of the Second Circuit in the *Carasso* case, *supra*—and the view of Judge Hastie, dissenting, in this case—that such costs are nondeductible personal expenses under Section 262 is correct and should be followed by this Court.

## CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.[*]

Respectfully submitted.

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[*] Should the Court hold in favor of the taxpayer on the basic question whether the cost of lodging on a trip undertaken for medical reasons is deductible, there would remain a question whether any part of the rent paid by the taxpayer should be allocated to his wife and child and, if so, whether that part

is also deductible. While the "Question Presented" in the government's petition may be technically broad enough to include that subordinate question, we do not argue it here. The petition was filed, and presumably granted, in order to resolve the direct conflict between the decision below and that of the Second Circuit in *Carasso* on the important question whether lodging expenses are deductible at all. The question of the *scope* of the deduction for lodging, if allowable—*i.e.*, the extent to which costs attributable to other members of the family may be deducted—is not now the subject of a conflict. If the Court holds that lodging costs are not as such outside the scope of Section 213, that remaining question may properly be left to further development in the lower courts before being resolved by this Court. We have accordingly limited our argument in this brief to the question of deductibility *vel non* of the cost of lodging during a medically-necessitated trip and we consent to the affirmance of the judgment below should that question be resolved against the government.

We may note that the Commissioner has ruled that the wife's *transportation* costs while accompanying her husband in circumstances similar to this case may be deducted under Section 213(e)(1)(B), and the Tax Court has so held. Rev. Rul. 58–533, 1958–2 Cum. Bull. 108; *Carasso* v. *Commissioner*, *supra*; *Lichterman* v. *Commissioner*, 37 T.C. No. 60. However, were it held that the basic deduction is not limited to transportation costs but also includes food and lodging during an extended stay, further examination of the general question of the persons whose expenses are deductible would obviously be necessary. Our limitation of the question before the Court in this case is, of course, not meant to foreclose that further examination in later cases should the decision here make it necessary.

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